

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JOSE RIGOBERTO MORENO,

Plaintiff,

v.

ANTHONY BRETTKELLY, et al.,

Defendants.

Case No. [20-cv-02082-WHO](#)

**ORDER GRANTING IFP AND
DISMISSING COMPLAINT WITH
LEAVE TO AMEND**

Re: Dkt. Nos. 1, 2, 3, 4, 5, 7

This is pro se plaintiff Jose Rigoberto Moreno's third case filed in this District. He filed his first case on June 22, 2019. *See* Complaint, Case No. 19-cv-04206-EMC [Dkt. No. 1]. Judge Edward M. Chen allowed leave to amend and directed him to the Legal Help Center to help him make his 337-page complaint coherent. On September 20, 2019, Judge Chen dismissed the case without prejudice for failure to timely file an amended complaint. *See* Order Dismissing Case, Case No. 19-cv-04206-EMC [Dkt. No. 20].

On November 12, 2019, Moreno filed his second case, naming largely the same defendants as his first case. *See* Complaint, Case No. 19-cv-07443-EMC [Dkt. No. 1]. On February 20, 2020, Judge Chen dismissed the case because Moreno failed to serve the defendants. *See* Order Dismissing Case, Case No. 19-cv-07443-EMC [Dkt. No. 31]. Judge Chen then issued an order to show cause why the case should not be dismissed with prejudice for failure to prosecute. *See* Order to Show Cause Why Case Should Not Be Dismissed With Prejudice and Denying Plaintiff's Motions to Compel, Case No. 19-cv-07443-EMC [Dkt. No. 32]. After reviewing Moreno's multiple filings, Judge Chen determined all five factors weighed in favor of dismissal and dismissed the case with prejudice. *See* Order Dismissing Case for Failure to Prosecute [Dkt. No. 35].

1 Moreno has now filed his third case before me, and asks to proceed *in forma pauperis*
2 (“IFP”), which I grant. [Dkt. No. 2]. However, even if Moreno qualifies for IFP status, I must
3 still examine the complaint to ensure that it alleges non-frivolous claims that can be pursued in
4 this court. See 28 U.S.C. § 1915(e)(2)(B)(i)–(ii). If a complaint is frivolous or fails to state a
5 claim, the statute requires me to dismiss the case. 28 U.S.C. § 1915(e)(2).

6 The Complaint before me names largely the same defendants and brings the same eight
7 causes of action as in Case No. 19-cv-07443-EMC. The “statement of relevant facts” section of
8 his Complaint is incomprehensible and other sections of his Complaint, *i.e.*, roughly 47 out of 65
9 pages, are identical to his previously filed complaint in Case No. 19-cv-07443-EMC. Although
10 that case was “not decid[ed] . . . on the merits,” Judge Chen “reviewed the Complaint and [could]
11 neither identify a viable cause of action from the pleadings, nor determine whether the Court
12 would have jurisdiction if a viable claim does exist.” I find the same is true here.

13 Therefore, I GRANT the IFP application but DISMISS the complaint under 28 U.S.C. §
14 1915(e) because it fails to state a claim upon which relief can be granted. Moreno may amend his
15 complaint no later than May 11, 2020; failure to do so will result in dismissal of this action.
16 Moreno’s requests to file electronically and appear telephonically is DENIED at this time. [Dkt.
17 Nos. 3, 4, 7]. His request that “summons be served” is also DENIED. [Dkt. No. 5]. Summons
18 may only be served once I have determined that Moreno alleges non-frivolous claims that can be
19 pursued in this court.

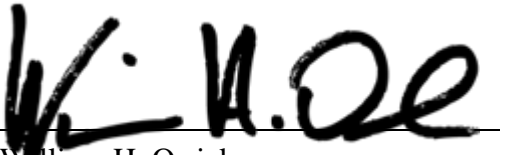
20 As Moreno has been advised on multiple occasions in his previously-filed he suits, the
21 amended complaint here must contain a short and plain statement of each claim for relief he
22 wishes to assert, identify the provisions of law and the set of facts that support each claim, and
23 link specific defendants by name to each claim. He must also describe each such defendant’s
24 involvement in the claim and the specific factual basis of liability. He must also specify what
25 relief he is seeking from the court.

26 In amending the complaint, Moreno is again encouraged to seek the free information that is
27 available to pro se litigants from the Legal Help Desk. Appointment can be made by calling (415)
28 782-8982 or emailing federalprobonoproject@sfbar.org. A free handbook for pro se litigants,

entitled Representing Yourself in Federal Court: A Handbook for Pro Se Litigants, is also
available free of charge for download at <https://www.cand.uscourts.gov/prosehandbook>.

IT IS SO ORDERED.

Dated: April 8, 2020



William H. Orrick
United States District Judge